



STATE OF INDIANA

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February 4, 2013

Mr. Jeff D. Hoover
8562 West 200 North
Tipton, Indiana 46072

Re: Formal Complaint 13-FC-09; Alleged Violation of the Access to Public Records Act by the Tipton County Assessor

Dear Mr. Hoover:

This advisory opinion is in response to your formal complaint alleging the Tipton County Assessor ("Assessor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Richard J. Hall, Attorney, responded on behalf of the Assessor. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that after the Council posted notice in the December 7, 2012 edition of the *Tipton Tribune*, a copy of the ERA resolution and boundary map should have been on file with the Tipton County Assessor's office. On December 17, 2012, you went to the Assessor's office to receive said records and were informed that the records had not been provided to the Assessor. You filed a written remonstrance to the Council with the Auditor's office on December 18, 2012.

In response to your formal complaint, Mr. Hall advised that the County was not able to provide you with copies immediately upon receiving your request. However, the day after receiving your request, you were provided with copies of the records that were requested. The County personally delivered copies of the records to your place of business.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See* I.C. § 5-14-3-1. The Assessor is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Assessor's public records during regular business hours unless the records are excepted from

disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c).

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered in determining if the requirements of section 3(a) under the APRA have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

Here, you submitted your original request for records on December 17, 2012. The Assessor was unable to immediately provide you with a copy of the records that day; however the County arranged so that the records were hand-delivered to your place of business on December 18, 2012. It is unclear from the Assessor's response whether the records were on file on December 17, 2012. Regardless, as to the issues you have raised regarding the APRA, it is my opinion that the Assessor complied with the requirements of section 3(b) of the APRA in providing all records responsive to your request in a reasonable period of time.

CONCLUSION

Based on the foregoing reasons, it is my opinion that the Assessor complied with the requirements of section 3(b) of the APRA in providing all records that were responsive to your request in a reasonable period of time.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Richard J. Hall